Republic of the Philippines
Supreme Court
Manila

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**
Appellee,

- versus -

**OLIVER RENATO EDAÑO *y* EBDANE,**
Appellant.

**G.R. No. 188133**

Present:

CARPIO, *J.*,
*Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

JUL 07 2014

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**DECISION**

**BRION, *J.*:**

We resolve in this appeal the challenge to the October 16, 2008 decision[1] and the December 23, 2008 resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CR HC No. 01142. The challenged CA decision affirmed the April 22, 2004 joint decision[3] of the Regional Trial Court (*RTC*), Branch 103, Quezon City, finding appellant Oliver Renato Edaño guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act (*R.A.*) No. 9165 (the Comprehensive Dangerous Drugs Act of 2002), and imposing on him the penalty of life imprisonment. The assailed resolution, on the other hand, denied the appellant's motion for reconsideration.

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1 *Rollo*, pp. 2-12; penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Bienvenido L. Reyes (now a member of this Court) and Mariflor P. Punzalan Castillo.

2 CA *rollo*, p. 139.

3 Id. at 21-27; penned by Judge Jaime N. Salazar, Jr.

## BACKGROUND FACTS

The prosecution charged the appellant and Godofredo Siochi with violation of Section 11, Article II of R.A. No. 9165 under two separate Informations, docketed as Criminal Case Nos. Q-02-111200 and Q-02-112104.

The appellant and Siochi pleaded not guilty to the charge on arraignment. Joint trial on the merits followed.

The prosecution presented, as its witnesses, Police Inspector (*P/Insp.*) Aylin Casignia and Police Officer (*PO*) 3 Elmer Corbe. The appellant, Siochi and Ruben Forteza took the witness stand for the defense.

The evidence for the prosecution established that on the evening of August 6, 2002, members of the Metro Manila Drugs Enforcement Group, composed of PO3 Corbe, PO3 Nelson Javier, PO3 Dennis Padpad, PO3 Marcelo Alcancia, Jr., together with a female informant, went to the parking area of McDonalds, West Avenue to conduct an entrapment operation against a certain *alias* "Nato."[4]

At around 7:00 p.m., the appellant arrived on board a space wagon driven by Siochi.[5] The informant approached the appellant and talked to him inside the vehicle. Afterwards, the informant waved at PO3 Corbe.[6] When PO3 Corbe was approaching the appellant, the latter went out of the vehicle and ran away. PO3 Corbe, PO3 Padpad and PO3 Alcancia chased the appellant; PO3 Corbe was able to grab the appellant, causing the latter to fall on the ground. PO3 Corbe recovered a "knot-tied" transparent plastic bag from the appellant's right hand, while PO3 Alcancia seized a gun tucked in the appellant's waist. The other members of the police arrested Siochi. Thereafter, the police brought the appellant, Siochi and the seized items to the police station for investigation.[7]

P/Insp. Casignia, the Forensic Chemical Officer of the Western Police District Crime Laboratory, examined the seized items and found them positive for the presence of shabu.[8]

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4 TSN, February 21, 2003, pp. 2-3, 18.
5 Id. at 8 and 24.
6 Id. at 19-21.
7 Id. at 5-7, 23.
8 TSN, December 11, 2002, pp. 12-17.

The appellant, for his part, testified that at around 4:00 p.m. on August 6, 2002, he called Siochi on the phone, and informed him that the motorbike starter the latter needed was already available.[9] On the same day, Vanessa Paduada called the appellant, and asked for the directions to McDonalds, West Avenue.[10] At around 6:00 p.m., Siochi and Ruben arrived at the gate of Philam Homes on board a space wagon. The appellant met them at the subdivision gate, and showed the starter to Siochi. Thereafter, Vanessa called on the appellant's cellular phone. The appellant then boarded the vehicle, and told Siochi that he would just talk to a person at McDonalds.[11] When the space wagon arrived at McDonalds, the appellant alighted from the vehicle and proceeded towards the restaurant's entrance. Afterwards, Vanessa called him from inside a parked car. The appellant approached Vanessa who, for her part, alighted from the car. Vanessa told the appellant to get inside the car's rear. The appellant did as instructed; Vanessa went to the front passenger seat, beside a male driver.[12] Immediately after, the male driver alighted from the vehicle and entered the car's rear. The appellant went out of the car, but the male driver followed him and grabbed his hand. The appellant resisted, and wrestled with the driver along West Avenue. During this commotion, the appellant heard a gunfire; four (4) persons approached him, and then tied his hands with a masking tape.[13] The police placed him on board a pick-up truck, and then brought him to Bicutan. In Bicutan, the police brought him to the interrogation room, where they punched him and placed a plastic on his head.[14]

In its joint decision dated April 22, 2004, the RTC found the appellant guilty beyond reasonable doubt of illegal possession of shabu under Section 11, Article II of R.A. No. 9165, and sentenced him to suffer the penalty of life imprisonment. It also ordered him to pay a ₱500,000.00 fine.

The RTC, however, acquitted Siochi on the ground of reasonable doubt.

On appeal, the CA affirmed the RTC decision *in toto*. The CA found PO3 Corbe to be a credible witness. The CA also found the appellant's warrantless arrest to be valid; it explained that the appellant's act of running when PO3 Corbe was approaching him reinforced the latter's suspicion that "something was amiss."[15]

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9 TSN, December 9, 2003, pp. 3-4.
10 Id. at 6.
11 Id. at 8-12; and TSN, February 16, 2004, pp. 11-12.
12 TSN, December 9, 2003, pp. 14-18.
13 Id. at 19-25.
14 Id. at 26-29.
15 *Supra* note 1, at 10.

The CA added that strict compliance with Section 21, Article II of R.A. No. 9165 was not required as long as the integrity of the seized item had been ensured. It further held that the police officers were presumed to have regularly performed their official duties.

Finally, the CA held that the prosecution was able to establish all the elements of illegal possession of shabu.

The appellant moved to reconsider this decision, but the CA denied his motion in its resolution dated December 23, 2008.

In his brief[16] and supplemental brief,[17] the appellant essentially alleged that PO3 Corbe's testimony was "vague and equivocal;"[18] it lacked details on how the appellant was lured to sell shabu to the informant, and how the entrapment operation had been planned. The appellant also argued that his warrantless arrest was illegal since he was not committing any crime when the police arrested him. He also claimed that the police did not mark and photograph the seized items, and that there was a broken chain of custody over the confiscated drugs.

The Office of the Solicitor General (*OSG*) counters with the argument that the testimony of PO3 Corbe was clear and convincing; the inconsistencies in his court testimony pertained only to minor details. It also claimed that the appellant's arrest was valid, and the seized shabu was admissible in evidence. Finally, the OSG maintained that there was no break in the chain of custody over the seized plastic bag containing shabu.[19]

## THE COURT'S RULING

After due consideration, we resolve to **ACQUIT** the appellant.

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16 CA *rollo*, pp. 44-54, 104-107.
17 *Rollo*, pp. 24-40.
18 *Supra* note 16, at 48.
19 CA *rollo*, pp. 72-95.

*Warrantless arrest invalid; seized items inadmissible*

Section 5(a), Rule 113 of the Rules of Criminal Procedure provides that a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense. This is known an arrest *in flagrante delicto*.[20]

"For a warrantless arrest of an accused caught *in flagrante delicto* to be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer."[21]

In the present case, there was no overt act indicative of a felonious enterprise that could be properly attributed to the appellant to rouse suspicion in the mind of PO3 Corbe that he (appellant) had just committed, was actually committing, or was attempting to commit a crime. In fact, PO3 Corbe testified that the appellant and the informant were **just talking with each other** when he approached them. For clarity and certainty, we reproduce PO3 Corbe's court testimony dated February 21, 2003, thus:

ATTY. RENATO SARMIENTO:

Q: You and the informant were not able to approach Nato because he sense[d] that you are (sic) a policeman?

PO3 CORBE:

A: Our informant first approached Renato Edano[,] and they **talked** but when he (sic) called me, Renato run (sic), sir.

Q: You said tinawag ka[,] who was that that call (sic) you?

A: Team informant, sir.

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Q: How did she call you?

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[20] See *George Antiquera y Codes v. People of the Philippines*, G.R. No. 180661, December 11, 2013.

[21] See *People v. Mendoza*, G.R. No. 191267, June 26, 2013, 700 SCRA 42, 51; italics supplied.

A: She waived (sic) her had (sic), sir.

Q: What was she doing?

A: She was **talking to Alias Nato**[,] sir.

Q: Did you hear what they are **talking**? (sic)

A: I was still in the car[.] **I was not able to hear**[,] sir.

Q: How would you know that they are **talking**, Mr. Witness? (sic)

A: I could see them, sir.

Q: What did you see?

A: **They were talking**, sir.

Q: **They were not exchanging stuff and money, Mr. witness**?

A: **Not yet, sir**.

Q: **While talking**[,] the female informant call[ed] you, Mr. Witness?

A: Yes, sir.[22] (emphases ours)

As testified to by PO3 Corbe himself, the appellant and the informant were just talking to each other; there was no exchange of money and drugs when he approached the car. Notably, while it is true that the informant waved at PO3 Corbe, the latter admitted that this was not the pre-arranged signal to signify that the sale of drugs had been consummated. PO3 Corbe also admitted on cross-examination that he had no personal knowledge on whether there was a prohibited drug and gun inside the space wagon when he approached it.

That the appellant attempted to run away when PO3 Corbe approached him is irrelevant and cannot by itself be construed as adequate to charge the police officer with personal knowledge that the appellant had just engaged in, was actually engaging in or was attempting to engage in criminal activity.

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22 TSN, February 21, 2003, pp. 19-21.

As the Court explained in *People v. Villareal*:[23]

> Furthermore, appellant's act of darting away when PO3 de Leon approached him should not be construed against him. Flight *per se* is not synonymous with guilt and must not always be attributed to one's consciousness of guilt. It is not a reliable indicator of guilt without other circumstances, for even in high crime areas there are many innocent reasons for flight, including fear of retribution for speaking to officers, unwillingness to appear as witnesses, and fear of being wrongfully apprehended as a guilty party. Thus, appellant's attempt to run away from PO3 de Leon is susceptible of various explanations; it could easily have meant guilt just as it could likewise signify innocence.[24]

In other words, trying to run away when no crime has been overtly committed, and without more, cannot be evidence of guilt.

Considering that the appellant's warrantless arrest was unlawful, the search and seizure that resulted from it was likewise illegal. Thus, the alleged plastic bag containing white crystalline substances seized from him is inadmissible in evidence, having come from an invalid search and seizure.

*Corpus delicti not proved with moral certainty*

Even granting, for the sake of argument, that the appellant's warrantless arrest was valid, the latter's acquittal is still in order due to the prosecution's failure to establish the evidence of the *corpus delicti* with moral certainty.

We stress that "[t]he existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs, it being the very *corpus delicti* of the crimes."[25] Thus, the evidence of the *corpus delicti* must be established beyond reasonable doubt.

In the present case, the various lapses – enumerated and discussed below – committed by the police in the handling, safekeeping and custody over the seized drug tainted the integrity and evidentiary value of the confiscated shabu.

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23 G.R. No. 201363, March 18, 2013, 693 SCRA 549.
24 Id. at 560; italics supplied, citations omitted.
25 See *People v. Magat*, 588 Phil. 395, 402 (2008).

*First*, we find it highly unusual and irregular that the police officers would let the appellant mark the drugs seized from him, instead of doing the marking themselves. To directly quote from the records:

ATTY. SARMIENTO:

Q: This item was not marked at the place allegedly where you apprehended the suspect at McDonald's, West Avenue, Quezon City, am I correct to say that?

PO3 CORBE:

A: Yes, sir.

Q: You are also required not only to mark it but to put your initial to it, my question **did you place your initial in this evidence**? (sic)

A: **No**, sir.

Q: **You did not**, Mr. Witness?

A: **No**, sir.

Q: You were also required to put the date of apprehension, being the arresting officer, **did you put the date in this evidence, Mr. Witness**?

A: **No**, sir.

Q: Why did you not do that, Mr. Witness?

A: What I remembered there is an initial of the accused, sir.

Q: **Who put the initial, Mr. Witness**?

A: **He was the one**, sir.

Q: At your station?

A: Yes, sir.

Q: **You did not put your initial**?

A: **No**, sir.

Q: **Why did you not put your initial**?

A: **I was not able to put sir**.[26] (emphases ours)

Marking, as used in drug cases, means the placing by the apprehending officer or the *poseur-buyer* of his/her initials and signature on the item/s seized. "Consistency with the "chain of custody" rule requires that the "marking" of the seized items - to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence - should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation."[27] The Court clarified in *People v. Resurreccion*[28] that marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.

Thus, while marking of the seized drugs at the police station is permitted, **the marking should be done by the police, and not by the accused**. The appellant's participation in the marking procedure should only be as a witness. Why the police failed to do a basic police procedure truly baffles us.

We also point out that per the testimony of P/Insp. Casignia, the Forensic Chemical Officer, the police forwarded two (2) plastic bags containing white crystalline substances to the crime laboratory for examination – one marked with the initials "*OR*" and the other marked with "*GS*." Both plastic bags were used as evidence against the appellant. The records, however, did not indicate who marked the plastic bag with "*GS*," who witnessed this marking, and when this marking had been made. As with the bag that had been marked "*OR*," we express doubts on whether the plastic bag containing white crystalline substances marked as "*GS*" was the same plastic bag taken from the appellant's co-accused, Siochi.

*Second*, the police **did not inventory or photograph** the seized drugs, whether at the place of confiscation or at the police station. These omissions were admitted by the prosecution during pre-trial.[29]

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26 TSN, February 21, 2003, pp. 14-15.
27 See *People v. Sanchez*, 590 Phil. 214, 241 (2008).
28 618 Phil. 520, 532 (2009).
29 See Records, p. 43.

The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory** and **photograph** the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.] [emphases ours]

This is implemented by Section 21 (a), Article II of the *Implementing Rules and Regulations* (*IRR*) of R.A. No. 9165, which reads:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory** and **photograph** the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.] [emphasis ours]

To be sure, Section 21(a), Article II of the IRR offers some flexibility in complying with the express requirements under paragraph 1, Section 21, Article II of R.A. No. 9165, *i.e.,"non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items*[.]" This saving clause, however, applies only where the prosecution recognized the procedural lapses and thereafter explained the cited justifiable grounds, and when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.[30]

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[30] *People v. Garcia*, 599 Phil. 416, 431 (2009), citing *People v. Sanchez*, 590 Phil. 214 (2008).

These conditions were not met in the present case, as the prosecution did not even attempt to offer any justification for its failure to follow the prescribed procedures in the handling and safekeeping of the seized items. "We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21[a] of R.A. No. 9165, or that there was a justifiable ground for failing to do so."[31] The Court cannot simply presume what these justifications are.

Although the Court has recognized that minor deviations from the procedures under R.A. No. 9165 would not automatically exonerate an accused, we have also declared that when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. No. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. **This doubt cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties**.[32]

In sum, we hold that the appellant's acquittal is in order since the *shabu* purportedly seized from him is inadmissible in evidence for being the proverbial fruit of the poisonous tree. Corollarily, the prosecution's failure to comply with Section 21, Article II of R.A. No. 9165, and with the chain of custody requirement of this Act, compromised the identity of the item seized, leading to the failure to adequately prove the *corpus delicti* of the crime charged.

**WHEREFORE**, premises considered, we **REVERSE** and **SET ASIDE** the October 16, 2008 decision and the December 23, 2008 resolution of the Court of Appeals in CA-G.R. CR HC No. 01142. Appellant Oliver Renato Edaño *y* Ebdane is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention unless he is otherwise legally confined for another cause.

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31 See *People v. Umipang*, G.R. No. 190321, April 25, 2012, 671 SCRA 324, 354; citations omitted.

32 See *People v. Ancheta*, G.R. No. 197371, June 13, 2012, 672 SCRA 604, 617.

Let a copy of this Decision be sent to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision.

**SO ORDERED.**

**ARTURO D. BRION**
Associate Justice

**WE CONCUR:**

**ANTONIO T. CARPIO**
Associate Justice
Chairperson

**MARIANO C. DEL CASTILLO**
Associate Justice

**JOSE PORTUGAL PEREZ**
Associate Justice

**ESTELA M. PERLAS-BERNABE**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ANTONIO T. CARPIO**
Associate Justice
Chairperson, Second Division

# CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**
Chief Justice